

Voting rights suits heating up

Voter purges, ID rules top the list.

By Pamela A. MacLean
STAFF REPORTER

VOTING RIGHTS litigation has been heating up around the country as fast as the presidential campaign, with challenges

attacking state restrictions on voter registration, purging of voter rolls and identification requirements.

In Florida, Georgia, Michigan, New Mexico and Wisconsin, packs of lawyers have pushed to beat the November election to resolve or enjoin lingering disputes over voter registration checks mandated in the Help

America Vote Act of 2002 (HAVA), or address a host of other claims.

Lawsuits generally fall into two broad camps: allegations of improper restrictions on voting, or improper registration of ineligible voters.

Also, lawsuits in Alabama and Washington have asked

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Election suits challenge

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whether the disenfranchisement of felons violates the Voting Rights Act. And attacks continue on photo identification rules for voters in Georgia, New Mexico and Ohio, despite the U.S. Supreme Court's March decision upholding Indiana's photo ID requirement for voters, *Crawford v. Marion County Board of Elections*, 128 S. Ct. 1610 (2008).

As recently as Sept. 16, the Democratic National Committee and the Barack Obama campaign rushed to file suit in a Michigan federal court days after reports spread on a political blog that Republicans in Macomb County planned to challenge the residency of voters whose names showed up on home foreclosure notices. *Matelski v. Macomb County Republican Party*, No. 08-cv-13982DML (E.D. Mich.).

James Carabelli, Macomb County Republican Party chairman, quickly denounced the claim as untrue, based on "reckless and fabricated reporting" that he called libelous.

Complying with HAVA

Part of the reason litigation has been particularly active comes from state attempts to comply with HAVA, which mandates that states verify voter registration information through computer checks against such things as driver's license lists and Social Security records, according to Daniel Tokaji, an election law specialist at Ohio State University Michael E. Moritz College of Law.

States, required to comply by 2006 with computer cross-check programs, have struggled. Mundane mismatches produced on lists can kick voters out for such things as registering as "Robert" on a driver's license, but as "Bob" on the voter rolls, or by using a hyphenated last name.

Florida, Iowa, Louisiana and South Dakota have tough "no match, no vote" policies in effect, according to Wendy Weiser, director of the voting rights project of the Brennan Center for Justice at New York University School of Law. She represents the League of Women Voters in a challenge to Florida's law.

In Wisconsin, state Attorney General J.B. Van Hollen, a Republican, filed suit on Sept. 10, demanding that the state Govern-

ELECTION HOTSPOTS

ALABAMA

U.S. v. State of Alabama, No. 06-cv-392WKW (M.D. Ala.): DOJ has sued to force state compliance with anti-fraud measures in Help America Vote Act of 2002. Pending.

FLORIDA

League of Women Voters v. Browning, No. 08-21243-civ (S.D. Fla.): Challenges the constitutionality of Florida registration law's restrictions on third-party registration groups. Filed April 2008.

GEORGIA

Democratic Party of Georgia v. Perdue, No. 08-cv-151081 (Fulton Co., Ga., Super. Ct.): State constitutional challenge to voter photo ID requirement in Georgia. Pending.

NEW MEXICO

AAPD v. Herrera, No. C08-702JOB (D.N.M.): Plaintiffs objected to New Mexico requirements that voter registration groups register with the state, turn in applications in 48 hours, get training and are limited to 50 applications at a time. On Sept. 17, the court ruled in favor of New Mexico.

WASHINGTON

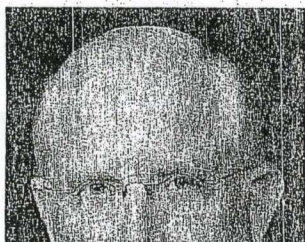
Farrakhan v. Locke, No. 06-35669 (9th Cir.): One of several suits challenging felon disenfranchisement laws as violation of Voting Rights Act. Appealed in 2006, awaiting 9th Circuit decision.

Source: NL Pressearch

is an ineligible voter and remove them from the rolls between now and the November election. The board has said its current cross-checking complies with HAVA and rejected Van Hollen's demand, prompting the lawsuit. *Van Hollen v. Government Accountability Board*, No. 08-cv-4085 (Dane Co., Wis., Cir. Ct.).

"It is entirely possible this case will be dismissed," said Lester Pines of Cullen Weston Pines & Bach in Madison, Wis., who represents the board. He pointed out that Van Hollen represents the board in three separate suits and is, in effect, suing his own client. State Supreme Court rules don't allow a lawyer to sue a client, he said.

Kevin St. John, special assistant attorney general, said Van Hollen's prime concern "is that state election law be followed. The



registration limits, ID laws

Central to an entire category of cases are state restrictions on how voter registration drives are conducted. The Florida law imposes steep fines on groups and individuals who register voters without training, or fail to turn in voter applications within 48 hours. New Mexico limits groups to 50 applications at a time, requires training and imposes criminal penalties for failure to return completed applications within 48 hours.

After the 2004 election, "New Mexico's Democratic legislature got stampeded on irrational fear to pass restrictions on voter registration groups," said John Boyd, who represents the American Association of People with Disabilities in a suit against the law. Boyd, an election law specialist at Freedman Boyd Hollander Goldberg & Ives in Albuquerque, N.M., said the suit challenges the law on First Amendment grounds and seeks an injunction. The court ruled on Sept. 17 for New Mexico in an 86-page decision that refused to enjoin the enforcement of the law, forcing the plaintiffs to head to the 10th U.S. Circuit Court of Appeals.

Scott Fuqua, assistant attorney general in Santa Fe, N.M., said the case is effectively dead for this election cycle. "I'd be shocked if they get a decision before Oct. 7," when registration books close. The court found the criminal sanction requires intentional violation; it did not find the law a burden on the First Amendment, he said.

A separate challenge to Albuquerque's voter ID statute is set for a Sept. 25 argument in the 10th Circuit. *ACLU of New Mexico v. Chavez*, No. 07-2067.

In Florida, the League of Women Voters shut down its nonpartisan voter registration activities for only the second time in its 70-year history because Florida Secretary of State Kurt Browning in April began to enforce Florida's voter registration law, which was originally enjoined in 2006.

before the 11th Circuit, *Common Cause v. Billups*, No. 08-10432 (11th Cir.).

"Requiring a photo ID has a dramatic impact," said Emmet Bondurant of Bondurant, Mixon & Elmore in Atlanta, who is attorney for plaintiffs in both suits. "It prohibits people who registered long ago to vote lawfully unless they have a photo ID," he said. If you registered fraudulently by mail you don't have to present ID to vote absentee, he pointed out.

A check of registered voters in Georgia turned up 505,000 lawfully registered voters who do not have Georgia driver's licenses, according to Bondurant.

The law places a special burden on the elderly and the poor, those least likely to have licenses, because they must make a special trip to the registrar's office to get a photo ID to vote, Bondurant said.

Russ Willard, spokesman for the Georgia attorney general in Atlanta said, "They have been unsuccessful in getting the state court to issue a restraining order." The federal litigation also came down on the side of the state and is currently before the 11th Circuit. He declined to address specifics of the case, except to say, "the state in general has disagreed with many plaintiff characterizations of the law, as have the courts."

The highly specialized area of voting law challenges have drawn pro bono help from lawyers at a variety of firms, including Bondurant; James Johnson of New York's Debevoise & Plimpton in the Florida League of Women Voters case; and Saslie Dimitroff of the Houston office of Washington's Howrey, in a Duval County, Fla., challenge to disabled voters' access to voting machines.

Dimitroff is confronting an unusual claim in Florida, where Duval County election officials refused to pay a \$1.4 million award of attorney fees after a federal judge ordered them to supply handicapped accessible machines.

The county purchased the machines prior to resolution of the suit, but after a full-blown trial, then asked the court to declare the case moot in 2007 and lift the injunction, he said.

"They fought tooth and nail for six years and had \$1.4 million in attorney fees. If they got the injunction vacated, the lawyers would not get the fees and there would be no consequence if the county removed the machines,"



SASLIE DIMITROFF:
Represented disabled
voters in Florida seeking

Jerry Summers

From: Suzanne Keith [skeith@tnaj.org]

Sent: Tuesday, November 04, 2008 3:19 PM

To: 'Andrea Elaine Phelan'; 'Brandon Bass'; 'Bruce Fox'; 'Bruce Kramer'; 'Bryan Capps'; 'Bryan Smith'; 'Cameron Jehl'; 'Chris Gilreath'; 'Christopher Taylor'; 'Clinton Swafford'; 'Daniel Clayton'; 'David Lyons'; 'Donna Davis'; 'Drake Martin'; 'Eric Buchanan'; 'Evan Meade'; 'Fred Denson'; 'Gary Gober'; 'Guy Holliman'; 'Holt Smith'; 'Houston Gordon'; 'J. D. Lee'; 'James Krenis'; 'Jeff Boyd'; 'Jerry Summers'; 'Jim Bilbo'; 'Jim Emison'; 'John Day'; 'John Pellegrin'; 'John T. Milburn Rogers'; 'Jon Peeler'; 'Karla Hewitt'; 'Kathryn Barnett'; 'Keith Williams'; 'Larry Wilks'; 'Leslie Muse'; 'Linda Carter'; 'Lori Jessee'; 'Marcos Garza'; 'Mark Beveridge'; 'Mark Chalos'; 'Mark Hartsoe'; 'Michelle Benjamin'; 'Morgan Adams'; 'Olen Haynes'; 'Pamela O'Dwyer'; 'Paul Berry Cooper'; 'Peter Olson'; 'Phillip Miller'; 'Randy Humble'; 'Rebecca Blair'; 'Richard Matthews'; 'Rick Moore'; 'Ricky Boren'; 'Robert T. Keeton, Jr.'; 'Rocky McElhaney'; 'Ronnie Berke'; 'Sadler Bailey'; 'Sid Gilreath'; 'Steve Greer'; 'Steve Terry'; 'Steven E. Marshall'; 'T. Robert Hill'; 'Tasha Blakney'; 'Tiffany Johnson'; 'Tim Edwards'; 'Tim Housholder'; 'Tim Smith'; 'Todd Shelton'; 'Tony Duncan'; 'Tony Seaton'; 'Trudy Bloodworth'; 'Wayne A. Ritchie'

Subject: Update on Election Protection

Here's the latest update from Linda Lipsen. She says that you should feel free to share.

2:30 p.m. Eastern Update

- Wisconsin – Large-scale absentee voter problems. Voter intimidation in Milwaukee. Long lines across the state especially in Milwaukee and Ozaukee counties.
- Pennsylvania – Machine malfunctions in at least a dozen polling locations in Pittsburgh and Philadelphia. Campaign material being illegally distributed inside polling places in Pittsburgh. Many reporting they never received their absentee ballots.
- Virginia (the new Florida?) – Some polling places are either completely closed or have been closed for several hours. Thousands of voters may have been turned away illegally by poll workers. Voters have illegally been given provisional ballots where machines have been broken. Students at Virginia Tech have been given misinformation and unexpectedly had their polling place moved 6 miles where there is little or no parking. Someone hacked into George Mason University (GMU) student e-mail and sent email saying Election Day had been changed for students at GMU. Reports of calls telling voters to go to the wrong polling location.
- Georgia – FEDERAL OBSERVERS HAVE BEEN SENT TO MONITOR CONROVERSY OVER STUDENT VOTING! We are working with Bleckley County, Georgia to ensure that students at Middle Georgia College are able to vote today after voting officials apparently extended, then suddenly withdrew, a deadline that would have ensured students were registered in time to use a regular ballot. Federal observers have now been sent to monitor the situation. The controversy stems from a registration drive by the Obama campaign at the college, where 90% of the students are African-American. About 500 students were registered prior to the deadline, but the registrar then sent a letter to 370 of the students asking for proof of residence within three days. Most of these students did not even receive the letter until after that deadline had passed. The Democratic Party and the National Bar Association urged the county attorney to resolve the issue. On October 31, the county attorney and registration officials said students could vote by regular ballot if they brought proof of residence to the registrar on or before Election Day. However, at 4pm yesterday the Democratic Party received a letter from the county attorney stating that students would not be allowed to cast a regular ballot unless proof of residence had been presented *prior* to Election Day.
- Michigan – More voting machine malfunctions at more than 20 precincts. Some voters have reported waits up to three hours. Some voters have been told to visit other polling locations (which is illegal). Some voters are being asked to vote on paper with magic markers. Many voters are angry and not aware of the legality of the recourse being offered by poll workers. In many cases they are being told to just write their vote down on regular paper and they will be counted later.

- Colorado – Problems being reported all across Colorado. Many are reporting they never got their absentee ballot. Many poll workers requiring additional and unnecessary identification in Denver. Many voters being told to fill out provisional ballots if they show up at the wrong polling location instead of redirecting them to the correct precinct.
- Ohio – Voters in Cleveland and Columbus are reporting that after voting at the same address for years they have been dropped for the voting rolls. They are on statewide data base, but not listed at polling location and this is in spite of them receiving voter registration card as late as this fall. Unfortunately, the first two issues occurred repeatedly in 2004 and 2006, but have not been corrected. Cuyahoga County was the scene of various problems with the voter-registration database in recent elections. Experts say these kinds of problems can stem from mischief, programming errors, database corruption or rogue code. Whatever the cause, they disenfranchise legitimate voters and interfere with an efficient, fair and accurate election process. Voters who experience these issues can vote with a provisional ballot, but obviously that's not an adequate substitute for casting a vote by regular ballot.

Jerry Summers

From: Suzanne Keith [skeith@tnaj.org]

Sent: Tuesday, November 04, 2008 4:31 PM

To: 'Andrea Elaine Phelan'; 'Brandon Bass'; 'Bruce Fox'; 'Bruce Kramer'; 'Bryan Capps'; 'Bryan Smith'; 'Cameron Jehl'; 'Chris Gilreath'; 'Christopher Taylor'; 'Clinton Swafford'; 'Daniel Clayton'; 'David Lyons'; 'Donna Davis'; 'Drake Martin'; 'Eric Buchanan'; 'Evan Meade'; 'Fred Denson'; 'Gary Gober'; 'Guy Holliman'; 'Holt Smith'; 'Houston Gordon'; 'J. D. Lee'; 'James Krenis'; 'Jeff Boyd'; 'Jerry Summers'; 'Jim Bilbo'; 'Jim Emison'; 'John Day'; 'John Pellegrin'; 'John T. Milburn Rogers'; 'Jon Peeler'; 'Karla Hewitt'; 'Kathryn Barnett'; 'Keith Williams'; 'Larry Wilks'; 'Leslie Muse'; 'Linda Carter'; 'Lori Jessee'; 'Marcos Garza'; 'Mark Beveridge'; 'Mark Chalos'; 'Mark Hartsoe'; 'Michelle Benjamin'; 'Morgan Adams'; 'Olen Haynes'; 'Pamela O'Dwyer'; 'Paul Berry Cooper'; 'Peter Olson'; 'Phillip Miller'; 'Randy Humble'; 'Rebecca Blair'; 'Richard Matthews'; 'Rick Moore'; 'Ricky Boren'; 'Robert T. Keeton, Jr.'; 'Rocky McElhaney'; 'Ronnie Berke'; 'Sadler Bailey'; 'Sid Gilreath'; 'Steve Greer'; 'Steve Terry'; 'Steven E. Marshall'; 'T. Robert Hill'; 'Tasha Blakney'; 'Tiffany Johnson'; 'Tim Edwards'; 'Tim Housholder'; 'Tim Smith'; 'Todd Shelton'; 'Tony Duncan'; 'Tony Seaton'; 'Trudy Bloodworth'; 'Wayne A. Ritchie'; 'Connie Wilson'; 'Lauren Brinkley'; 'Marjorie Beard'; 'Sherry Ross'

Subject: Election Protection Update

From: Linda.Lipsen@justice.org

4:00 PM EST UPDATE

More than 52,000 calls have now come into the Election Protection, the largest nonpartisan voting rights coalition, since the phones opened at 5:30 a.m. eastern.

- **Florida** - We have received more than 35 calls in 15 counties from voters all across the state concerned that their precinct's optical scan machine is not working. When this occurs, ballots are supposed to be placed in a "a secure bin" under the voting machine. Because of the volume of ballots, these bins are now filling up. We have received several reports of poll workers collecting ballots in a bag, which is not in accordance with the law. Election Protection is working with local election officials to ensure that all votes that have yet to be counted due to optical scan malfunctions are placed in secure locations.
- **Michigan** - Voters on Detroit's east side were waiting 5 hours to vote in 1,000-person long line at Beth Eden Baptist, largely as a result of an understaffed polling operation. An Election Protection partner law firm on the ground in Detroit is investigating the situation.
- **Virginia** - In Chesapeake they had lines that were 6 and 7 hours long, in response to our coalition they brought in extra workers to help alleviate the wait which cut the wait time back significantly. There is major concern from the coalition that there will be a ballot shortage in the state of Virginia and we have asked them to print extra ballots, but so far they have declined until they actually run out of ballots. We are working to see that these are printed BEFORE they run out. Virginia has a unique law that states that at 6:45 p.m. if there are people waiting in line, the election officials have to start writing down the names of everyone waiting in line. Obviously, with lines being several hundred or thousand long, the question is what happens when they cannot take down all the lines by 7:00 p.m. The coalition is working to get this resolved before 6:45 tonight.
- **Youth Vote** - We are seeing two trends when it comes to the youth vote today: a voter surge in youth-dense precincts, and young people facing obstacles to casting their vote. Reports from dozens of youth dense precincts across the country including those in Virginia, Pennsylvania, Indiana and Michigan indicate that young voters are flooding the polls despite long lines and logistical obstacles. As of noon at Drexel University in Philadelphia, 395 people have voted and

179 people were in line, a total of 574. In 2004, a total of 425 people voted in the same precinct. This is a strong early indicator of high turnout, already exceeding young voter turnout levels from 2004. Several college voters are getting text messages that state: "Due to long lines Obama voters will vote on Wednesday instead of today, thank you for your support of Obama." There is also misinformation being posted on social networking sites such as Facebook.

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